

# Town of Frederick Board of Trustees



Eric Doering, Mayor

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AM 2010-089

## Licensing of Primary Caregivers in Medical Marijuana Program Registry

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**Agenda Date:** Town Board Meeting – September 28, 2010

**Attachments:**

- a. Proposed Resolution with Draft Ordinance
- b. Draft Municipal and Land Use Code Revisions

**Fiscal Note:** None noted

  
Administrative Services Director

**Submitted by:**   
Town Attorney

**Approved for Presentation:**   
Town Administrator

**AV Use Anticipated** Projector \_\_\_\_\_ Laptop \_\_\_\_\_

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**Certification of Board Approval:**

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Date

### **Summary Statement:**

In May 2010, the Board of Trustees adopted a resolution extending a moratorium on the acceptance and approval of commercial medical marijuana operations and licensing within the Town. On June 6, 2010, Colorado's Governor signed HB 10-1284, which was passed by the State Legislature in May and created a substantial body of state law regulating commercial medical marijuana operations. Neither HB 10-1284 nor the Town's current moratorium regulates primary caregivers beyond offering basic parameters. The role of a primary caregiver presents an opportunity for abuse leading to a loophole around local government opting-out of permitting medical marijuana operations. As such, the Town is considering how to honor the intent of the voters in 2000 in passing Amendment XX while limiting the opportunity for abuse by primary caregivers.

### **Detail of Issue/Request:**

Section 14 of Article XVIII, Colo. Const., was added in 2000 and in 2009 medical marijuana operations began appearing in larger numbers. The General Assembly passed HB 10-1284 in May, 2010, and the Governor signed it in June, adding regulatory structure of Colorado's Medical Marijuana industry. The Bill focused mostly on commercial operations, creating three classifications from the previous "dispensary" classification. Most substantially, the Bill granted local governments the ability to "opt-out" of allowing commercial operations within their jurisdictions.

The Bill left intact most of the privileges of a Patient on the State Medical Marijuana Program Registry, as well as the role of a primary caregiver, but did define the scope of a primary caregiver's role:

- A caregiver must be "a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition", and
- may not have more than five patients

The Bill did provide for exceptions to the patient cap, creating a potential loophole in local regulation (or ban) of commercial operations. As such, Town staff has drafted proposed revisions to the Frederick Land Use and Municipal Codes to limit the role of a primary caregiver to the scope contemplated in the state Constitution and HB 10-1284, and to categorize the role as a home occupation. A proposed ordinance and a resolution to adopt the ordinance by reference accompany this memo.

### **Legal/Political Considerations:**

HB 10-1284 focused mainly on commercial operations and did not offer much control over primary caregivers. There is a split among municipal attorneys regarding the extent to which primary caregivers may be regulated in light of the general rights under the state Constitution. Nevertheless, it appears these operations may be classified as home occupations and required to comply with at least the Town's business licensing provisions.

### **Alternatives/Options:**

Decline to adopt a resolution to set a hearing for adoption by reference of the ordinance describing primary caregiver licensing amendments to the Land Use and Municipal Codes; Require staff to present the comprehensive revisions in full at a subsequent Trustee meeting for public consideration prior to adoption; OR decline to pursue regulations that focus on limiting the scope of primary caregiver operations within the Town.

### **Financial Considerations:**

none

### **Staff Recommendation:**

Adopt the proposed resolution for adoption by reference or specify additional/other measures to fulfill the intent of the Trustees regarding regulation or non-regulation of primary caregivers in the Town.